

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)

Chamber Ref: FTS/HPC/RP/24/2401

Title No: MID235722

32/6 Morningside Road, Edinburgh EH10 4DA ("The Property")

The Parties:-

Ms Rachael Aulich, 32/6 Morningside Road, Edinburgh EH10 4DA ("the tenant")

Mr Steven Thomson, 42 Lilyhill Terrace, Edinburgh EH8 7DU and
Mr Derek Thomson, 29a Main Street, Bainsford, Falkirk FK2 7PQ ("the Landlords")

Tribunal Members: Richard Mill (Legal Member) and Greig Adams (Ordinary Member)

Decision

The property does not meet the repairing standard. The landlords have not complied with the duty imposed by section 14(1) of the Housing (Scotland) Act 2006. A Repairing Standard Enforcement Order is necessary.

Background

1. The tenant applied to the tribunal for a determination of whether the landlords have failed to comply with the duties imposed by section 14(1) of the Act in respect of the property.
2. In the written application the tenant stated that the landlords have failed to comply with its duty to ensure that the property meets the repairing

standard according to section 13(1)(a), (b) and (h), which set out the following obligations:-

- whether the house is wind and watertight and in all other respects reasonably fit for human habitation.
- whether the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.
- whether the house meets the tolerable standard insofar as it is structurally stable.

Inspection

3. The tribunal inspected the property on 2 September 2024 at 10.00 am. The tenant permitted entry to the tribunal members. The landlords had been invited but did not attend.

Hearing

4. Following the inspection of the property, the tribunal convened a hearing on 2 September 2024 at 11.45 am at 126 George Street, Edinburgh EH2 4HH. The tenant and Mr Steven Thomson joined the hearing.

Findings in Fact

5. The tribunal makes the following findings in fact (as at 2 September 2024):
 - a. The title to the subjects known as 32/6 Morningside Road, Edinburgh EH10 4DA is held by the landlords in the Land Register for Midlothian MID235722.
 - b. The property which is the subject of this application is a three bedroom third floor flat within a traditional sandstone tenement in an established area of Edinburgh. The property is comprised of a hallway, living room, kitchen, three bedrooms and bathroom.
 - c. Living Room bipartite windows
The left hand (north) window was noted to be extensively timber decayed and in very poor condition to such extent that affects the integrity of the window and represents an immediate safety concern. This window was not attempted to be opened such

was the extent of concern. The right hand (south) window was opened to allow review of the external timberwork. There was obvious significant timber decay affecting the lower sections of the window and by applying simple finger pressure, timber was found to be soft and breaking away affecting the integrity of the window.

d. Kitchen window

There was noted to be obvious misalignment at the central rail position between the top and bottom sashes due to the top sash slipping vertically and not being secured in its fully closed position resulting in an open gap at the head of the top sash, A makeshift internal protective lining has been provided to attempt to limit debris, rain and wind infiltration whilst timber blocks have been affixed to the sash frame to attempt to limit any further vertical slippage of the top sash. Perimeter seals were also noted to be cracked and defective.

e. Rear Bedroom window

The rear bedroom sash and casement window sash cords were noted to be snapped and defective resulting in impairment of the sashes and a lack of counterbalance to allow such parts to be safely operated. Perimeter seals were also noted to be cracked and defective.

f. The tenant has lived in the property under a Short Assured Tenancy which commenced in June 2008. The property originating landlord was the late mother of the current landlords. They have inherited the property and are now the landlords in implementation of their late mother's Will.

6. Reference is made to the schedule of photographs comprised within the inspection report prepared by the tribunal and attached to this decision.

Reasons for Decision

7. The Tribunal determined the application having regard to the bundle of papers, together with their observations at the inspection and the submissions noted from both parties at the hearing.
8. The Tribunal is only able to consider the complaints which form part of the intimated application and had an obligation to consider the complaints as at the date of the inspection and hearing on 2 September 2024.

9. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material with which to reach a fair determination of the reference.
10. Mr Thomson accepted that the four windows in the property complained about are in a serious state of disrepair. He referred to the history of attempts to instruct relevant contractors to carry out the work. He has more recently instructed a further firm, RKM Joinery, to undertake the work having obtained assistance from the Window Advice Centre. There is no requirement for planning or conservation consent. A deposit has been paid for the new windows and these are currently being manufactured with a provisional install date of mid-October 2024.
11. There is no doubt based upon the Tribunal's findings that the serious state of disrepair of the windows in the property mean that the property does not currently meet the repairing standard. The property is not wind and watertight. Mr Thomson did not dispute this. The repair issues with the windows have been ongoing for around two years now. Given the length of time which the issue of replacement of the windows had been ongoing, it is reasonable, necessary and proportionate, for a formal legal order to be made by the Tribunal requiring the Landlord to take steps as soon as possible to replace the windows.
12. The Tribunal determined to make a Repairing Standard Enforcement Order (RSEO). The Tribunal determined that the landlords be provided with a period of 8 weeks to carry out these works which is reasonable given the nature and extent of the works.

Decision

13. The Tribunal, having made enquiries for the purposes of determining whether the landlords have complied with the duty imposed by Section 14(1) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property, determined that the landlords have failed to comply with their duty imposed by Section 14(1)(b) of the Act in respect that the property does not meet the repairing standard.

Right of Appeal

14. In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

15. Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

In witness whereof these presents type written on this and the preceding 4 pages are executed by Richard George Mill, solicitor, 69-71 Dalry Road, Edinburgh EH11 2AA, legal member of the tribunal at Edinburgh on 4 September 2024 before this witness:-

Richard Mill

____ Legal Member

__ Witness

__ Name

__ Address

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Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

Inspection Report

Chamber Ref: FTS/HPC/RP/24/2401



Property: 32/6 MORNINGSIDE ROAD, EDINBURGH, EH10 4DA (“The Property/The House”)

Title No: MID235722

THE PARTIES:

Mr Steven Andrew Thomson, residing at 42 Lilyhill Terrace, Edinburgh, EH8 7DU and Mr Derek Anthony Thomson, residing at 29a Main Street, Bainsford, Falkirk, FK2 7PQ (“the Landlords”)

Mr Ben Ridder and Ms Rachel Aulich residing together at 32/6 Morningside Road, Edinburgh, EH10 4DA (“the Tenants”)

THE TRIBUNAL:

Tribunal members: Richard Mill (Legal Member/Chair) and Greig Adams (Ordinary/surveyor Member)

Background:

On 28 May 2024 the applicant submitted Form A asking for a Repairing Standard Enforcement Order on the basis that the property fails to meet both the Repairing Standard and the Tolerable Standard.

Access:

The inspection was undertaken at 10am on 2 September 2024 by the Tribunal Members. The inspection extended to an inspection of the various items of complaint comprising part of the Application.



Brief Description of Property:

The Property comprises of a top-floor, 3-bay residential flat within a four-storey traditional stone construction property dating from circa 1880. The front elevation incorporates sandstone with sill course at 2nd floor and projecting stone architraves framing windows. There is a bipartite window providing daylighting to the living room comprising of centre pivot casements with fixed top and bottom lights, the remainder of windows reviewed were of traditional sash and casement design.

Purpose of Inspection:

The purpose of the inspection was to allow the Tribunal members to review the tenant's disrepair complaint prior to the forthcoming Hearing scheduled for 11.45am on 2 September 2024.

The inspection:

The numbered items contained below provide a brief summary of each of the individual items of complaint contained within the Application pertaining to disrepair. Below each of the numbered items are commentary of the inspection undertaken with regards to each item:

1. Living Room bipartite windows

The left hand (north) window was noted to be extensively timber decayed and in very poor condition to such extent that affects the integrity of the window and represents an immediate safety concern. This window was not attempted to be opened such was the extent of concern.

The right hand (south) window was opened to allow review of the external timberwork. There was obvious significant timber decay affecting the lower sections of the window and by applying simple finger pressure, timber was found to be soft and breaking away affecting the integrity of the window.

2. Kitchen window

There was noted to be obvious misalignment at the central rail position between the top and bottom sashes due to the top sash slipping vertically and not being secured in its fully closed position resulting in an open gap at the head of the top sash, A makeshift internal protective lining has been provided to attempt to limit debris, rain and wind infiltration whilst timber blocks have been affixed to the sash frame to attempt to limit any further vertical slippage of the top sash. Perimeter seals were also noted to be cracked and defective.

3. Rear Bedroom window

The rear bedroom sash and casement window sash cords were noted to be snapped and defective resulting in impairment of the sashes and a lack of counterbalance to allow such parts to be safely operated. Perimeter seals were also noted to be cracked and defective.



Greig Adams

Greig Adams BSc (Hons) FRICS C. Build E FCABE LETAPAEWE
Surveyor Member

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Appendix A – Photographic Record



1 Morningside Road elevation.



2 Third Floor flat windows viewed from street level.



3 Living Room – north window (timber decay evident).



4 Living Room – south window (timber decay evident).



5 Living Room – south window (timber decay evident).



6 Kitchen window – temporary protection to gap above top sash unable to be closed.



7 Kitchen window – misalignment of central rail due to top sash slippage.



8 Defective perimeter sealant at Kitchen window.



9 Timber blocks fitted to sash frame below top sash to prevent further slippage.



10 Rear Bedroom window.



11 Rear Bedroom window.



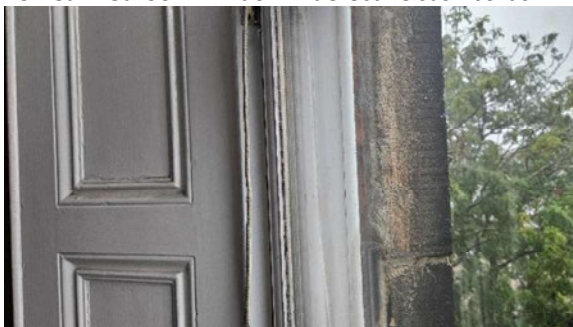
12 Rear Bedroom window – defective sash cords.



13 Rear Bedroom window – defective sash cords.



14 Rear Bedroom window – defective sash cords.



15 Rear Bedroom window – defective perimeter seals.



16 Rear Elevation.